

§ 1.1502-3

26 CFR Ch. I (4-1-13 Edition)

which § 1.1502-22 does not apply, computed by reference to the excess of the consolidated net long-term capital gain over the consolidated net short-term capital loss (see § 1.1502-41A for the determination of the consolidated net long-term capital gain and the consolidated net short-term capital loss));

(i) [Reserved]

(j) The tax imposed by section 1333 on war loss recoveries; and

by allowing as a credit against such taxes the investment credit under section 38 (see § 1.1502-3), and the foreign tax credit under section 33 (see § 1.1502-4). For purposes of this section, the surtax exemption of the group for a consolidated return year is \$25,000, or if a lesser amount is allowed under section 1561, such lesser amount. See § 1.1561-2(a)(2). For increase in tax due to the application of section 47, see § 1.1502-3(f). For amount of tax surcharge, see section 51 and § 1.1502-7.

[T.D. 6894, 31 FR 11794, Sept. 8, 1966, as amended by T.D. 7093, 36 FR 4871, Mar. 13, 1971; T.D. 7937, 49 FR 3462, Jan. 27, 1984; T.D. 8677, 61 FR 33326, June 27, 1996; T.D. 8823, 64 FR 36099, July 2, 1999]

§ 1.1502-3 Consolidated tax credits.

(a) *Determination of amount of consolidated credit*—(1) *In general.* The credit allowed by section 38 for a consolidated return year of a group shall be equal to the consolidated credit earned. The consolidated credit earned is equal to the aggregate of the credit earned (as determined under subparagraph (2) of this paragraph) by all members of the group for the consolidated return year.

(2) *Determination of credit earned.* The credit earned of a member is an amount equal to 7 percent of such member's qualified investment (determined under section 46(c)). For purposes of computing a member's qualified investment, the basis of property shall not include any gain or loss realized with respect to such property by another member in an intercompany transaction (as defined in § 1.1502-13(b)), whether or not such gain or loss is deferred. Thus, if section 38 property acquired in an intercompany transaction has a basis of \$100 to the purchasing member, and if the selling member has a \$20 gain with respect to such property, the basis of such property for pur-

poses of computing the purchaser's qualified investment is only \$80. Such \$80 basis shall also be used for purposes of applying section 47 to such property. See paragraph (f) of this section.

(3) *Consolidated limitation based on amount of tax.* (i) Notwithstanding the amount of the consolidated credit earned for the taxable year, the consolidated credit allowed by section 38 to the group for the consolidated return year is limited to:

(a) So much of the consolidated liability for tax as does not exceed \$25,000, plus

(b) For taxable years ending on or before March 9, 1967, 25 percent of the consolidated liability for tax in excess of \$25,000, or

(c) For taxable years ending after March 9, 1967, 50 percent of the consolidated liability for tax in excess of \$25,000.

The \$25,000 amount referred to in the preceding sentence shall be reduced by any part of such \$25,000 amount apportioned under § 1.46-1 to component members of the controlled group (as defined in section 46(a)(5)) which do not join in the filing of the consolidated return. For further rules for computing the limitation based on amount of tax with respect to the suspension period (as defined in section 48(j)), see section 46(a)(2). The amount determined under this subparagraph is referred to in this section as the "consolidated limitation based on amount of tax."

(ii) If an organization to which section 593 applies or a cooperative organization described in section 1381(a) joins in the filing of the consolidated return, the \$25,000 amount referred to in subdivision (i) of this subparagraph (reduced as provided in such subdivision) shall be apportioned equally among the members of the group filing the consolidated return. The amount so apportioned equally to any such organization shall then be decreased in accordance with the provisions of section 46(d). Finally, the sum of all such equal portions (as decreased under section 46(d)) of each member of the group shall be substituted for the \$25,000 amount referred to in subdivision (i) of this subparagraph.

(4) *Consolidated liability for tax.* For purposes of subparagraph (3) of this

paragraph, the consolidated liability for tax shall be the income tax imposed for the taxable year upon the group by chapter 1 of the Code, reduced by the consolidated foreign tax credit allowable under § 1.1502-4. The tax imposed by section 56 (relating to minimum tax for tax preferences), section 531 (relating to accumulated earnings tax), section 541 (relating to personal holding company tax), and any additional tax imposed by section 1351(d)(1) (relating to recoveries of foreign expropriation losses), shall not be considered tax imposed by chapter 1 of the Code. In addition, any increase in tax resulting from the application of section 47 (relating to certain dispositions, etc., of section 38 property) shall not be treated as tax imposed by chapter 1 for purposes of computing the consolidated liability for tax.

(b) *Carryback and carryover of unused credits*—(1) *Allowance of unused credit as consolidated carryback or carryover.* A group shall be allowed to add to the amount allowable as a credit under paragraph (a)(1) of this section for any consolidated return year an amount equal to the aggregate of the consolidated investment credit carryovers and carrybacks to such year. The consolidated investment credit carryovers and carrybacks to the taxable year shall consist of any consolidated unused credits of the group, plus any unused credits of members of the group arising in separate return years of such members, which may be carried over or back to the taxable year under the principles of section 46(b). However, such consolidated carryovers and carrybacks shall not include any consolidated unused credits apportioned to a corporation for a separate return year pursuant to paragraph (c) of § 1.1502-79 and shall be subject to the limitations contained in paragraphs (c) and (e) of this section. A consolidated unused credit for any consolidated return year is the excess of the consolidated credit earned over the consolidated limitation based on amount of tax for such year.

(2) *Absorption rules.* For purposes of determining the amount, if any, of an unused credit (whether consolidated or separate) which can be carried to a taxable year (consolidated or separate),

the amount of such unused credit which is absorbed in a prior consolidated return year under section 46(b) shall be determined by:

(i) Applying all unused credits which can be carried to such prior year in the order of the taxable years in which such unused credits arose, beginning with the taxable year which ends earliest, and

(ii) Applying all such unused credits which can be carried to such prior year from taxable years ending on the same date on a pro rata basis.

(3) *Example.* The provisions of paragraphs (a) and (b) of this section may be illustrated by the following example:

Example. (i) Corporation P is incorporated on January 1, 1966. On that same day P incorporates corporation S, a wholly owned subsidiary. P and S file consolidated returns for calendar years 1966 and 1967. P's and S's credit earned, the consolidated credit earned, and the consolidated limitation based on amount of tax for 1966 and 1967 are as follows:

	Credit earned	Consolidated credit earned	Consolidated limitation based on amount of tax
1966:			
P	\$60,000		
S	\$30,000	\$90,000	\$100,000
1967:			
P	\$40,000		
S	\$25,000	\$65,000	\$50,000

(ii) P's and S's credit earned for 1966 are aggregated, and the group's consolidated credit earned, \$90,000, is allowable in full to the group as a credit under section 38 for 1966 since such amount is less than the consolidated limitation based on amount of tax for 1966, \$100,000.

(iii) Since the consolidated limitation based on amount of tax for 1967 is \$50,000, only \$50,000 of the \$65,000 consolidated credit earned for such year is allowable to the group under section 38 as a credit for 1967. The consolidated unused credit for 1967 of \$15,000 (\$65,000 less \$50,000) is a consolidated investment credit carryback and carryover to the years prescribed in section 46(b). In this case the consolidated unused credit is a consolidated investment credit carryback to 1966 (since P and S were not in existence in 1964 and 1965) and a consolidated investment credit carryover to 1968 and subsequent years. The portion of the consolidated unused credit for 1967 which is allowable as a credit for 1966 is \$10,000. This amount shall be added to the amount allowable as a credit to the group for 1966. The balance of the consolidated unused credit for 1967 to be carried

§ 1.1502-3

26 CFR Ch. I (4-1-13 Edition)

to 1968 is \$5,000. These amounts are computed as follows:

Consolidated carryback to 1966			\$15,000
1966 consolidated limitation based on tax		\$100,000	
Less: Consolidated credit earned for 1966	\$90,000		
Consolidated unused credits attributable to years preceding 1967	0	\$90,000	
Limit on amount of 1967 consolidated unused credit which may be added as a credit for 1966			\$10,000
Balance of 1967 consolidated unused credit to be carried to 1968			\$5,000

(c) *Limitation on investment credit carryovers and carrybacks from separate return limitation years applicable for consolidated return years for which the due date of the return is on or before March 13, 1998*—(1) *General rule.* In the case of an unused credit of a member of the group arising in a separate return limitation year (as defined in § 1.1502-1(f)) of such member (and in a separate return limitation year of any predecessor of such member), the amount which may be included under paragraph (b) of this section (computed without regard to the limitation contained in paragraph (e) of this section) shall not exceed the amount determined under paragraph (c)(2) of this section.

(2) *Computation of limitation.* The amount referred to in paragraph (c)(1) of this section with respect to a member of the group is the excess, if any, of—

(i) The limitation based on amount of tax of the group, minus such limitation recomputed by excluding the items of income, deduction, and foreign tax credit of such member; over

(ii) The sum of the investment credit earned by such member for such consolidated return year, and the unused credits attributable to such member which may be carried to such consolidated return year arising in unused credit years ending prior to the particular separate return limitation year.

(3) *Special effective date.* This paragraph (c) applies to consolidated return years for which the due date of the income tax return (without extensions) is on or before March 13, 1998. See para-

graph (d) of this section for the rule that limits the group's use of a section 38 credit carryover or carryback from a SRLY for a consolidated return year for which the due date of the income tax return (without extensions) is after March 13, 1998. See also paragraph (d)(4) of this section for an optional effective date rule (generally making the rules of this paragraph (c) inapplicable to a consolidated return year beginning after December 31, 1996, if the due date of the income tax return (without extensions) for such year is on or before March 13, 1998).

(4) *Examples.* The provisions of this paragraph (c) may be illustrated by the following examples:

Example 1. (i) Assume the same facts as in the example contained in paragraph (b)(3) of this section, except that all the stock of corporation T, also a calendar year taxpayer, is acquired by P on January 1, 1968, and that P, S, and T file a consolidated return for 1968. In 1966, T had an unused credit of \$10,000 which has not been absorbed and is available as an investment credit carryover to 1968. Such carryover is from a separate return limitation year. P's and S's credit earned for 1968 is \$10,000 each, and T's credit earned is \$8,000; the consolidated credit earned is therefore \$28,000. The group's consolidated limitation based on amount of tax for 1968 is \$50,000. Such limitation recomputed by excluding the items of income, deduction, and foreign tax credit of T is \$30,000. Thus, the amount determined under paragraph (c)(2)(i) of this section is \$20,000 (\$50,000 minus \$30,000). Accordingly, the limitation on the carryover of T's unused credit is \$12,000, the excess of \$20,000 over \$8,000 (the sum of T's credit earned for the taxable year and any carryovers from prior unused credit years (none in this case)). Therefore T's \$10,000 unused credit from 1966 may be carried over to the consolidated return year without limitation.

(ii) The group's consolidated credit earned for 1968, \$28,000, is allowable in full as a credit under section 38 since such amount is less than the consolidated limitation based on amount of tax, \$50,000.

(iii) The group's consolidated investment credit carryover to 1968 is \$15,000, consisting of the consolidated unused credits of the group (\$5,000) plus T's separate return year unused credit (\$10,000). The entire \$15,000 consolidated carryover shall be added to the amount allowable to the group as a credit under section 38 for 1968, since such amount is less than \$22,000 (the excess of the consolidated limitation based on tax, \$50,000, over the sum of the consolidated credit earned for

1968, \$28,000, and unused credits arising in prior unused credit years, zero).

Example 2. Assume the same facts as in *Example 1*, except that the amount determined under paragraph (c)(2)(i) of this section is \$12,000. Therefore, the limitation on the carryover of T's unused credit is \$4,000. Accordingly, the consolidated investment credit carryover is only \$9,000 since the amount of T's separate return year unused credit which may be added to the group's \$ 5,000 consolidated unused credit is \$4,000. These amounts are computed as follows:

T's carryover to 1968 .....	.....	.....	\$10,000
Consolidated limitation based on amount of tax minus recomputed limitation .....	.....	\$12,000	.....
Less: T's credit earned for 1968	\$8,000	.....	.....
Unused credits attributable to T arising in unused credit years preceding 1966	0	\$8,000	.....
Limit on amount of 1966 unused credit of T which may be added to consolidated investment credit carryover .....	.....	.....	\$4,000
Balance of 1966 unused credit of T to be carried to 1969 (subject to the limitation contained in paragraph (c) of this section) .....	.....	.....	\$6,000

(d) *Limitation on tax credit carryovers and carrybacks from separate return limitation years applicable for consolidated return years for which the due date of the return is after March 13, 1998—(1) General rule.* The aggregate of a member's unused section 38 credits arising in SRLYs that are included in the consolidated section 38 credits for all consolidated return years of the group may not exceed—

(i) The aggregate for all consolidated return years of the member's contributions to the consolidated section 38(c) limitation for each consolidated return year; reduced by

(ii) The aggregate of the member's section 38 credits arising and absorbed in all consolidated return years (whether or not absorbed by the member).

(2) *Computational rules—(i) Member's contribution to the consolidated section 38(c) limitation.* If the consolidated section 38(c) limitation for a consolidated return year is determined by reference to the consolidated tentative minimum

tax (see section 38(c)(1)(A)), then a member's contribution to the consolidated section 38(c) limitation for such year equals the member's share of the consolidated net income tax minus the member's share of the consolidated tentative minimum tax. If the consolidated section 38(c) limitation for a consolidated return year is determined by reference to the consolidated net regular tax liability (see section 38(c)(1)(B)), then a member's contribution to the consolidated section 38(c) limitation for such year equals the member's share of the consolidated net income tax minus 25 percent of the quantity which is equal to so much of the member's share of the consolidated net regular tax liability less its portion of the \$25,000 amount specified in section 38(c)(1)(B). The group computes the member's shares by applying to the respective consolidated amounts the principles of section 1552 and the percentage method under §1.1502-33(d)(3), assuming a 100% allocation of any decreased tax liability. The group must make proper adjustments so that taxes and credits not taken into account in computing the limitation under section 38(c) are not taken into account in computing the member's share of the consolidated net income tax, etc. (See, for example, the taxes described in section 26(b) that are disregarded in computing regular tax liability.) Also, the group may apportion all or a part of the \$25,000 amount (or lesser amount if reduced by section 38(c)(3)) for any year to one or more members.

(ii) *Years included in computation.* For purposes of computing the limitation under this paragraph (d), the consolidated return years of the group include only those years, including the year to which a credit is carried, that the member has been continuously included in the group's consolidated return, but exclude—

(A) For carryovers, any years ending after the year to which the credit is carried; and

(B) For carrybacks, any years ending after the year in which the credit arose.

(iii) *Subgroups and successors.* The SRLY subgroup principles under §1.1502-21(c)(2) apply for purposes of this paragraph (d). The predecessor and

successor principles under §1.1502-21(f) also apply for purposes of this paragraph (d).

(iv) *Overlap with section 383.* The principles under §1.1502-21(g) apply for purposes of this paragraph (d). For example, an overlap of paragraph (d) of this section and the application of section 383 with respect to a credit carryover occurs if a corporation becomes a member of a consolidated group (the SRLY event) within six months of the change date of an ownership change giving rise to a section 383 credit limitation with respect to that carryover (the section 383 event), with the result that the limitation of this paragraph (d) does not apply. See §§1.1502-21(g)(2)(ii)(A) and 1.383-1; see also §1.1502-21(g)(4) (subgroup rules).

(3) *Effective date*—(i) *In general.* This paragraph (d) generally applies to consolidated return years for which the due date of the income tax return (without extensions) is after March 13, 1998.

(A) *Contribution years.* Except as provided in paragraph (d)(4)(ii) of this section, a group does not take into account a consolidated taxable year for which the due date of the income tax return (without extensions) is on or before March 13, 1998, in determining a member's (or subgroup's) contributions to the consolidated section 38(c) limitation under this paragraph (d).

(B) *Special subgroup rule.* In the event that the principles of §1.1502-21(g)(1) do not apply to a particular credit carryover in the current group, then solely for purposes of applying paragraph (d) of this section to determine the limitation with respect to that carryover and with respect to which the SRLY register (the aggregate of the member's or subgroup's contribution to consolidated section 38(c) limitation reduced by the aggregate of the member's or subgroup's section 38 credits arising and absorbed in all consolidated return years) began in a taxable year for which the due date of the return is on or before May 25, 2000, the principles of §1.1502-21(c)(2) shall be applied without regard to the phrase “or for a carryover that was subject to the overlap rule described in paragraph (g) of this section or §1.1502-15(g) with respect to another group (the former group).”

(ii) *Overlap rule.* Paragraph (d)(2)(iv) of this section (relating to overlap with section 383) applies to taxable years for which the due date (without extensions) of the consolidated return is after May 25, 2000. For purposes of paragraph (d)(2)(iv) of this section, only an ownership change to which section 383, as amended by the Tax Reform Act of 1986 (100 Stat. 2085), applies and which results in a section 383 credit limitation shall constitute a section 383 event.

(4) *Optional effective date of January 1, 1997.* (i) For consolidated taxable years beginning on or after January 1, 1997, for which the due date of the income tax return (without extensions) is on or before March 13, 1998, in lieu of paragraphs (c) and (e)(3) of this section (relating to the general business credit), §1.1502-4(f)(3) and (g)(3) (relating to the foreign tax credit), the next to last sentence of §1.1502-9A(a)(2), §1.1502-9A(b)(1)(v) (relating to overall foreign losses), and §1.1502-55(h)(4)(iii) (relating to the alternative minimum tax credit), a consolidated group may apply the corresponding provisions as they appear in 1998-1 C.B. 655 through 661 (see §601.601(d)(2) of this chapter) (treating references in such corresponding provisions to §§1.1502-9(b)(1)(ii), (iii), and (iv) as references to §§1.1502-9A(b)(1)(ii), (iii), and (iv)). Also, in the case of a consolidated return change of ownership that occurs on or after January 1, 1997, in a taxable year for which the due date of the income tax return (without extensions) is on or before March 13, 1998, a consolidated group may choose not to apply paragraph (e) of this section and §1.1502-4(g) to taxable years ending after December 31, 1996. A consolidated group making the choices described in the two preceding sentences generally must apply all such corresponding provisions (including not applying paragraph (e) of this section and §1.1502-4(g)) for all relevant years. However, a consolidated group making the election provided in §1.1502-9A(b)(1)(vi) (electing not to apply §1.1502-9A(b)(1)(v) to years beginning before January 1, 1998) may nevertheless choose to apply all such corresponding provisions referred to in this paragraph

(d)(4)(i) other than the provision corresponding to §1.1502-9A(b)(1)(v) for all relevant years.

(ii) If a consolidated group chooses to apply the corresponding provisions referred to in paragraph (d)(4)(i) of this section, the consolidated group shall not take into account a consolidated taxable year beginning before January 1, 1997, in determining a member's (or subgroup's) contributions to the consolidated section 38(c) limitation under this paragraph (d).

(5) *Example.* The following example illustrates the provisions of this paragraph (d):

Example. (i) Individual A owns all of the stock of P and T. P is the common parent of the P group. P acquires all the stock of T at the beginning of Year 2. T carries over an unused section 38 general business credit from Year 1 of \$100,000. The table in paragraph (i) of this Example shows the group's net consolidated income tax, consolidated tentative minimum tax, and consolidated net regular tax liabilities, and T's share of such taxes computed under the principles of section 1552 and the percentage method under §1.1502-33(d)(3), assuming a 100% allocation of any decreased tax liability, for Year 2. (The effects of the lower section 11 brackets are ignored, there are no other tax credits affecting a group amount or member's share, and \$1,000s are omitted.)

Year 2	Group	P's share of col. 1	T's share of col. 1
1. consolidated taxable income	\$2,000	\$1,200	\$800
2. consolidated net regular tax	\$700	\$420	\$280
3. consolidated alternative minimum taxable income	\$4,000	\$3,200	\$800
4. consolidated tentative minimum tax	\$800	\$640	\$160
5. consolidated net income tax	\$800	\$520	\$280
6. greater of line 4 or 25% of (line 2 minus \$25,000) <u>for the group</u>	\$800		
7. consolidated §38(c) limitation (line 5 minus line 6)	\$0		

(ii) T's Year 1 is a SRLY with respect to the P group. See §1.1502-1(f)(2)(ii). T did not undergo an ownership change giving rise to a section 383 credit limitation within 6 months of joining the P group. Thus, T's \$100,000 general business credit arising in Year 1 is subject to a SRLY limitation in the P group. The amount of T's unused section 38 credits from Year 1 that are included in the consolidated section 38 credits for Year 2 may not exceed T's contribution to the consolidated

section 38(c) limitation. For Year 2, the group determines the consolidated section 38(c) limitation by reference to consolidated tentative minimum tax for Year 2. Therefore, T's contribution to the consolidated section 38(c) limitation for Year 2 equals its share of consolidated net income tax minus its share of consolidated tentative minimum tax. T's contribution is \$280,000 minus \$160,000, or \$120,000. However, because the

Internal Revenue Service, Treasury

§ 1.1502-3

group has a consolidated section 38 limitation of zero, it may not include any of T's unused section 38 credits in the consolidated section 38 credits for Year 2.

(iii) The following table shows similar information for the group for Year 3:

Year 3	Group	P's share of col. 1	T's share of col. 1
1. consolidated taxable income	\$1,200	\$1,500	\$(300)
2. consolidated net regular tax	\$420	\$525	\$(105)
3. consolidated alternative minimum taxable income	\$1,500	\$1,700	\$(200)
4. consolidated tentative minimum tax	\$300	\$340	\$(40)
5. consolidated net income tax	\$420	\$525	\$(105)
6. greater of line 4 or 25% of (line 2 minus \$25,000) <u>for the group</u>	\$300		
7. consolidated §38(c) limitation (line 5 minus line 6)	\$120		

(iv) The amount of T's unused section 38 credits from Year 1 that are included in the consolidated section 38 credits for Year 3 may not exceed T's aggregate contribution to the consolidated section 38(c) limitation

for Years 2 and 3. For Year 3, the group determines the consolidated section 38(c) limitation by reference to the consolidated tentative minimum tax for Year 3. Therefore, T's contribution to the consolidated section 38(c) limitation for Year 3 equals its share of consolidated net income tax minus its share of consolidated tentative minimum tax. Applying the principles of section 1552 and § 1.1502-33(d) (taking into account, for example, that T's positive earnings and profits adjustment under § 1.1502-33(d) reflects its losses actually absorbed by the group), T's contribution is \$(105,000) minus \$(40,000), or \$(65,000). T's aggregate contribution to the consolidated section 38(c) limitation for Years 2 and 3 is \$120,000 + \$(65,000), or \$55,000. The group may include \$55,000 of T's Year 1 unused section 38 credits in its consolidated section 38 tax credit in Year 3.

(e) *Limitation on investment credit carryovers where there has been a consolidated return change of ownership*—(1) *General rule.* If a consolidated return change of ownership (as defined in paragraph (g) of § 1.1502-1) occurs during the taxable year or an earlier taxable year, the amount which may be included under paragraph (b) of this section in the consolidated investment credit carryovers to the taxable year with respect to the aggregate unused credits attributable to old members of the group (as defined in paragraph (g)(3) of § 1.1502-1) arising in taxable years (consolidated or separate) ending on the same day and before the taxable year in which the consolidated return change of ownership occurred shall not exceed the amount determined under subparagraph (2) of this paragraph.

(2) *Computation of limitation.* The amount referred to in subparagraph (1) of this paragraph shall be the excess of the consolidated limitation based on the amount of tax for the taxable year, recomputed by including only the items of income, deduction, and foreign tax credit of the old members, over the sum of:

(i) The aggregate investment credits earned by the old members for the taxable year, and

(ii) The aggregate unused investment credits attributable to the old members which may be carried to the taxable year arising in unused credit years ending prior to the particular unused credit year or years.

(3) *Special effective date.* This paragraph (e) applies only to a consolidated

return change of ownership that occurred during a consolidated return year for which the due date of the income tax return (without extensions) is on or before March 13, 1998. See paragraph (d)(4) of this section for an optional effective date rule (generally making the rules of this paragraph (e) also inapplicable if the consolidated return change of ownership occurred on or after January 1, 1997, and during a consolidated return year for which the due date of the income tax return (without extensions) is on or before March 13, 1998).

(f) *Early dispositions, etc., of section 38 property*—(1) *Dispositions of section 38 property during and after consolidated return year.* If property is subject to section 47(a) (1) or (2) with respect to a member during a consolidated return year, any increase in tax shall be added to the tax liability of the group under § 1.1502-2 (regardless of whether the property was placed in service in a consolidated or separate return year). Also, if property is subject to section 47(a) (1) or (2) with respect to a corporation during a taxable year for which such corporation files on a separate return basis, any increase in tax shall be added to the tax liability of such corporation (regardless of whether such property was placed in service in a consolidated or separate return year).

(2) *Exception for transfer to another member.* (i) Except as provided in subdivisions (ii) and (iii) of this subparagraph, a transfer of section 38 property from one member of the group to another member of such group during a consolidated return year shall not be treated as a disposition or cessation within the meaning of section 47(a)(1). If such section 38 property is disposed of, or otherwise ceases to be section 38 property or becomes public utility property with respect to the transferee, before the close of the estimated useful life which was taken into account in computing qualified investment, then section 47(a) (1) or (2) shall apply to the transferee with respect to such property (determined by taking into account the period of use, qualified investment, other dispositions, etc., of the transferor). Any increase in tax due to the application of section 47(a) (1) or (2) shall be added to the tax liability of

such transferee (or the tax liability of a group, if the transferee joins in the filing of a consolidated return).

(ii) Except as provided in subdivision (iii) of this subparagraph, if section 38 property is disposed of during a consolidated return year by one member of the group to another member of such group which is an organization to which section 593 applies or a cooperative organization described in section 1381(a), the tax under chapter 1 of the Code for such consolidated return year shall be increased by an amount equal to the aggregate decrease in the credits allowed under section 38 for all prior taxable years which would result solely from treating such property, for purposes of determining qualified investment, as placed in service by such organization to which section 593 applies or such cooperative organization described in section 1381(a), as the case may be, but with due regard to the use of the property before such transfer.

(iii) Section 47(a)(1) shall apply to a transfer of section 38 property by a corporation during a consolidated return year if such corporation is liquidated in a transaction to which section 334(b)(2) applies.

(3) *Examples.* The provisions of this paragraph may be illustrated by the following examples:

Example 1. P, S, and T file a consolidated return for calendar year 1967. In such year S places in service section 38 property having an estimated useful life of more than 8 years. In 1968, P, S, and T file a consolidated return and in such year S sells such property to T. Such sale will not cause section 47(a)(1) to apply.

Example 2. Assume the same facts as in example (1), except that P, S, and T filed separate returns for 1967. The sale from S to T will not cause section 47(a)(1) to apply.

Example 3. Assume the same facts as in example (1), except that P, S, and T continue to file consolidated returns through 1971 and in such year T disposes of the property to individual A. Section 47(a)(1) will apply to the group and any increase in tax shall be added to the tax liability of the group. For the purposes of determining the actual period of use by T, such period shall include S's period of use.

Example 4. Assume the same facts as in example (3), except that T files a separate return in 1971. Again, the actual periods of use by S and T will be combined in applying section 47. If the disposition results in an increase in tax under section 47(a)(1), such ad-

ditional tax shall be added to the separate tax liability of T.

Example 5. Assume the same facts as in example (1), except that in 1969, P sells all the stock of T to a third party. Such sale will not cause section 47(a)(1) to apply.

[T.D. 6894, 31 FR 11794, Sept. 8, 1966, as amended by T.D. 7246, 38 FR 758, Jan. 4, 1973; T.D. 8597, 60 FR 36679, July 18, 1995; T.D. 8751, 63 FR 1742, Jan. 12, 1998; T.D. 8766, 63 FR 12642, Mar. 16, 1998; T.D. 8884, 65 FR 33754, May 25, 2000; 65 FR 48379, Aug. 8, 2000; 65 FR 50281, Aug. 17, 2000]

§ 1.1502-4 Consolidated foreign tax credit.

(a) *In general.* The credit under section 901 for taxes paid or accrued to any foreign country or possession of the United States shall be allowed to the group only if the common parent corporation chooses to use such credit in the computation of the tax liability of the group for the consolidated return year. If this choice is made, no deduction may be taken on the consolidated return for such taxes paid or accrued by any member of the group. See section 275(a)(4).

(b) *Limitation effective under section 904(a) for the group—(1) Common parent's limitation effective for group.* The determination of whether the overall limitation or the per-country limitation applies for a consolidated return year shall be made by reference to the limitation effective with respect to the common parent corporation for such year. If the limitation effective with respect to a member for its immediately preceding separate return year differs from the limitation effective with respect to the common parent corporation for the consolidated return year, then such member shall, if the overall limitation is effective with respect to the common parent, be deemed to have made an election to use such overall limitation, or, if the per-country limitation is effective with respect to the common parent, be deemed to have revoked its election to use the overall limitation. Consent of the Secretary or his delegate (if otherwise required) is hereby given to such member for such election or revocation. Any such election or revocation shall apply only prospectively beginning with such consolidated return year.